

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

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for

Senate Bill 436

BY SENATORS TARR, SWOPE, JEFFRIES, AND BARRETT

[Originating in the Committee on Finance; reported on

February 17, 2023]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §12-10-1 and §12-10-2, all relating to prompt payment of legitimate
3 uncontested invoices by state agencies; providing that registered and qualified vendors
4 shall be entitled to prompt payment upon presentation to a state agency of a legitimate
5 uncontested invoice; providing the rate of interest and manner of calculation; determining
6 the date an invoice is considered received by a state agency; outlining rights of state
7 agencies to receive updated invoices with interest prior to payment; requiring state
8 agencies to explain and calculate interest on the payment claim at the time it is submitted
9 to the State Auditor; providing the timeline in which state agencies shall process
10 payments; providing the timeline in which state agencies shall process payments for other
11 agencies; providing for the definition of "state agency"; and providing for exceptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. PROMPT PAYMENT ACT OF 2023.

§12-10-1. Short title.

1 This article shall be known and may be cited as the Prompt Payment Act of 2023.

§12-10-2. Payment of legitimate uncontested invoices; interest on late payments.

1 (a) Any properly registered and qualified vendor who supplies services or commodities to
2 any state agency shall be entitled to prompt payment upon presentation to that state agency of a
3 legitimate uncontested invoice: *Provided*, That employees of the state shall not be considered
4 vendors under this article.

5 (b)(1) For purchases of services or commodities made on or after July 1, 2023, a check,
6 state warrant, purchasing card transaction, or electronic payment shall be issued in payment
7 thereof within 45 business days after a legitimate uncontested invoice is received by the state
8 agency receiving the services or commodities. Any check, state warrant, purchasing card
9 transaction, or electronic payment issued after 45 business days shall include interest calculated
10 as the Wall Street Journal Prime Rate plus three percent determined on the date on which the

11 check or warrant is mailed to the vendor, the electronic payment is issued and cleared through
12 the bank, or the purchasing card transaction is initiated and cleared by the bank.

13 (2) For purposes of this subsection, an invoice shall be deemed to be received by a state
14 agency on the date on which the invoice is marked as received by the state agency, the date of
15 the postmark made by the United States Postal Service as evidenced on the envelope in which
16 the invoice is mailed, or the date the invoice is logged received or confirmed on an electronic
17 mailbox or messaging system, whichever is earlier, unless the vendor can provide sufficient
18 evidence that the invoice was received by the state agency on an earlier date: *Provided, That in*
19 the event an invoice is received by a state agency prior to the date on which the commodities
20 covered by the invoice are delivered in full and accepted or the services covered by the invoice
21 are fully performed and accepted, the invoice shall be deemed to be received on the date on
22 which the commodities covered by the invoice were actually delivered in full and accepted or the
23 services covered by the invoice were fully performed and accepted.

24 (c) Prior to initiating payment that includes interest as provided in §12-10-2(b)(1) of this
25 code, a state agency may request a vendor present a revised invoice for payment including
26 itemized interest and all other charges authorized under this article. The state agency reserves
27 the right to recalculate and ensure the itemized interest amounts are correct prior to payment of
28 a late invoice and shall ensure interest is appropriate and due before payment of an invoice with
29 interest added for late payment. The state agency shall add explanatory documentation to the
30 claim for payment prior to submitting it to the State Auditor's office to explain the difference
31 between the amount of the invoice and the amount requested to pay the vendor in the statewide
32 accounting system. For reporting purposes, the State Auditor may require agencies to properly
33 separate reporting of the payment for commodities and services and the payment of interest in
34 the statewide accounting system using budgetary object codes or tracking codes.

35 (d) The state agency initially receiving a legitimate uncontested invoice shall process the
36 invoice within 10 business days from the day of its receipt. Failure to comply with the requirements

37 of this subsection shall render the state agency liable for payment of the interest mandated by
38 §12-10-2(b)(1) of this code when there is a failure to promptly pay a legitimate uncontested
39 invoice: *Provided*, That a state agency shall not be liable for payment of interest owed by another
40 state agency under this section: *Provided, however*, That the State Auditor's office shall not be
41 liable for payment of interest when an invoice is delayed due to the State Auditor's office's refusal
42 of the payment request due to the state agency's noncompliance with the payment standards
43 promulgated by the State Auditor when submitting payment.

44 (e) Any state agency charged by law with processing another state agency's requisition
45 for payment of a legitimate uncontested invoice shall either process the claim or reject it for good
46 cause within 10 business days after such processing state agency receives it. Failure to comply
47 with the requirements of this subsection shall render the processing state agency liable
48 for payment of the interest mandated by §12-10-2(b)(1) of this code when there is a failure to
49 promptly pay a legitimate uncontested invoice unless the processing state agency did not receive
50 the invoice from the paying agency in a timely manner.

51 (f) For purposes of this section, "state agency" is defined as any agency, department,
52 board, office, bureau, commission, authority, or any other entity of the executive, judicial, elected,
53 or legislative branch of state government.

54 (g) The provisions of this article do not apply to any vendor, grantee, or subgrantee who
55 is debarred, whose payments are required to be offset and intercepted to a state or federal
56 agency, or who is otherwise ineligible to receive payment from the state by any act provided for
57 in this code.

58 (h) Nothing in this article should be construed to limit the right of a state agency to refuse
59 illegitimate, erroneous, fraudulent, or disputed claims for payment.